

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

WILLIAM S. WEST,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District  
Court of the Eastern District of Wash-  
ington, Northern Division.

FILED

MAY - 9 1924

F. D. MORNINGTON



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

FRANK R. JEFFREY, Federal Building, Spo-  
kane, Washington,

H. SYLVESTER GARVIN, Federal Building,  
Spokane, Washington,

Attorneys for Plaintiff and Defendant in  
Error.

EDWARD A. DAVIS, Pasco, Washington,

Attorney for Defendant and Plaintiff in  
Error. [1\*]

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In the District Court of the United States for  
the Eastern District of Washington, Northern  
Division.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WM. S. WEST and JERRY McKAY, *alias*  
JAMES D. STOTT,

Defendants.

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\*Page-number appearing at foot of page of original Certified Tran-  
script of Record.

## INFORMATION.

H. Sylvester Garvin, Assistant United States Attorney for the Eastern District of Washington, who for the said United States and in this behalf prosecutes in his own proper person, comes into court on this 19th day of September, in the year 1923, and with leave of the Court first had and obtained, upon his official oath gives the Court here to understand and to be informed as follows:

## COUNT I.

That Wm. S. West and Jerry McKay, *alias* James D. Stott, whose other or true names are unknown, late of the County of Spokane, State of Washington, heretofore, to wit, on or about the 20th day of May, 1923, in the said county of Spokane, in the Northern Division of the Eastern District of Washington and within the jurisdiction of this Court, did then and there knowingly, wilfully and unlawfully sell a quantity of intoxicating liquor, to wit, Scotch whiskey and Canadian beer, the exact amount of which is unknown to one J. Pickett and one J. M. Simmons, then and there containing more than one-half of one per centum of alcohol by volume and then and there being fit for beverage purposes, and which said sale by the said Wm. S. West and Jerry McKay, *alias* James D. Stott, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, [2] 1919, known as the National Prohibition Act, contrary to the form of the statute in such



case made and provided and against the peace and dignity of the United States.

COUNT II.

And the Assistant United States Attorney for the Eastern District of Washington, further informs the Court:

That Wm. S. West and Jerry McKay, *alias* James D. Stott, whose other or true names are unknown, late of the county of Spokane, State of Washington, heretofore, to wit, on or about the 2d day of June, 1923, in the said county of Spokane, in the Northern Division of the Eastern District of Washington and within the jurisdiction of this Court, did then and there knowingly, wilfully and unlawfully sell to one J. M. Simmons intoxicating liquor, to wit, Scotch Whiskey and Canadian Beer, the exact amount being to the Assistant United States Attorney unknown, then and there containing more than one-half of one per centum of alcohol by volume and then and there being fit for beverage purposes, and which said sale by the said Wm. S. West and Jerry McKay, *alias* James D. Stott, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT III.

And the Assistant United States Attorney for the Eastern District of Washington, further informs the Court:

That Wm. S. West and Jerry McKay, *alias* James D. Stott, whose other or true names are unknown, late of the county of Spokane, State of Washington, heretofore, to wit, on or about the 8th day of June, 1923, in the said county of Spokane, in the Northern Division of the Eastern District [3] of Washington and within the jurisdiction of this Court, did then and there knowingly, wilfully and unlawfully sell to J. Pickett and J. M. Simmons intoxicating liquor, to wit, Scotch whiskey and Canadian beer, the exact amount being to the Assistant United States Attorney unknown, then and there containing more than one-half of one per centum of alcohol by volume and then and there being fit for beverage purposes, and which said sale by the said Wm. S. West, and Jerry McKay, *alias* James D. Stott, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT IV.

And the Assistant United States Attorney for the Eastern District of Washington, further informs the Court:

That Wm. S. West and Jerry McKay, *alias* James D. Stott, whose other or true names are unknown, late of the county of Spokane, State of Washington, heretofore, to wit, on or about the 8th day of June, 1923, in the said county of Spokane, in the Northern Division of the Eastern District

of Washington and within the jurisdiction of this Court, did then and there knowingly, wilfully and unlawfully sell to one J. Pickett two (2) quarts of spirituous liquor called Canadian beer, then and there containing more than one-half of one per centum of alcohol by volume and then and there being fit for beverage purposes, and which said sale by the said Wm. S. West and Jerry McKay, *alias* James D. Stott, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the [4] National Prohibition Act, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT V.

And the Assistant United States Attorney for the Eastern District of Washington, further informs the Court:

That Wm. S. West and Jerry McKay, *alias* James D. Stott, whose other or true names are unknown, late of the county of Spokane, State of Washington, heretofore, to wit, on or about the 20th day of May, 1923, in the said county of Spokane, in the Northern Division of the Eastern District of Washington and within the jurisdiction of this Court, did then and there knowingly, wilfully and unlawfully have and maintain a common nuisance at and on the premises known as the Cliff House, west of the city of Spokane, in Spokane county, near the Sunset Boulevard, in that the said Wm. S. West and Jerry McKay, *alias* James D. Stott, did then and there sell

and keep intoxicating liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there being fit for beverage purposes and which said sales and keeping of intoxicating liquor by the said Wm. S. West and Jerry McKay, *alias* James D. Stott, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

H. SYLVESTER GARVIN,  
Assistant United States Attorney. [5]

United States of America,  
Eastern District of Washington,—ss.

H. Sylvester Garvin, being first duly sworn, upon his oath deposes and says:

That he is the duly appointed, qualified and acting Assistant United States Attorney for the Eastern District of Washington and that he makes this verification as such; that he has read the above and foregoing information, knows the contents thereof and that the same is true as he verily believes.

H. SYLVESTER GARVIN.

Subscribed and sworn to before me this 19th day of September, A. D. 1923.

A. P. RUMBURG,  
Deputy Clerk, United States District Court, Eastern District of Washington.

Let process issue.

Dated this 19th day of September, A. D. 1923.

J. STANLEY WEBSTER,

Judge.

Bond fixed at \$——.

Filed in the U. S. Dist. Court, Eastern Dist. of Washington. Sep. 19, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [6]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. C-4308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM WEST,

Defendant.

VERDICT.

We, the jury in the above-entitled cause, find the defendant is guilty as to first count, is guilty as to second count, is guilty as to third count, is guilty as to fourth count, is guilty as to fifth count, as charged in the information.

WM. A. KOMMERS,

Foreman.

Filed in the U. S. District Court, Eastern District of Washington. Oct. 17, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [7]

In the District Court of the United States for  
the Eastern District of Washington, North-  
ern Division.

No. C-4308.

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
WILLIAM WEST,  
Defendant.

MOTION FOR NEW TRIAL.

Comes now the defendant and moves the Court for an order setting aside the verdict rendered by the jury herein, and granting the defendant a new trial in said cause, for the following reasons, to wit:

1. The verdict of the jury is not sustained by the evidence.

2. The verdict of the jury is contrary to the evidence and the law.

3. Errors in law, occurring at the time of the trial, and excepted to at the time by the defendant.

EDWARD A. DAVIS,  
Attorney for Defendant.

Filed in the U. S. District Court, Eastern District of Washington. Oct. 18, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [8]



In the District Court of the United States for  
the Eastern District of Washington, Northern  
Division.

September, 1923, Term—Saturday, Oct. 20, 1923—  
39th day.

Present: Honorable J. STANLEY WEBSTER,  
Presiding.

PROCEEDINGS:

No. C-4308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM WEST,

Defendant.

MINUTES OF COURT—OCTOBER 20, 1923—  
ORDER DENYING MOTION FOR NEW  
TRIAL.

Now on this day the above-entitled cause came  
on regularly for hearing on motion for new trial,  
and said motion having been argued by counsel,  
and the Court being fully advised in the premises,  
it is hereby

ORDERED that said motion be, and the same  
hereby is denied, to which defendant excepts, and  
exception allowed.

IT IS FURTHER ORDERED that said defendant is hereby allowed sixty days from this date in which to file bill of exceptions in this cause.

\* \* \* \* \*

J. STANLEY WEBSTER,  
Judge. [9]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. C-4308.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

WILLIAM WEST,  
Defendant.

SENTENCE.

Now, on this 20th day of Oct. 1923, into Court comes the above-named defendant for sentence, and being informed by the Court of his conviction herein of record, he is asked by the Court if he has any legal cause to show why the judgment of this Court should not now be pronounced in his case, he nothing says, save as he before hath said.

WHEREUPON, it is now by the Court CONSIDERED and ADJUDGED upon the verdict of the jury finding defendant guilty as charged in the information, that said defendant is guilty, and that said defendant, now before the Court, be confined in the Spokane County Jail, State of



Washington, or in such other prison as may be hereafter designated for the confinement of persons convicted of offenses against the laws of the United States, for a period of four months and to pay a fine of \$400, to stand committed until he is duly discharged by law, and now the said defendant is committed to the custody of the marshal of the United States for the Eastern District of Washington, who will carry this sentence into execution.

Filed in the U. S. District Court, Eastern District of Washington. Oct. 20, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [10]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. C-4308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM WEST,

Defendant.

BAIL BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned defendant herein herewith deposits with the clerk of the above-entitled court the sum of Fifteen Hundred Dollars (\$1500.00) as a bond for my appearance in said court or in the United States Circuit Court of Appeals for

the 9th Judicial Circuit at the time or times herein specified.

Signed and sealed this 22d day of October, A. D. 1923.

The condition of the above obligation is such that, WHEREAS the above-bonded principal WILLIAM WEST has prosecuted a writ of error to the Circuit Court of Appeals for the 9th Judicial Circuit to reverse the judgment and to grant to the principal a new trial in the above-entitled action, and

WHEREAS, the *bale* and supersedeas bond of the defendant has been fixed at Fifteen Hundred Dollars (\$1500.00), and

WHEREAS, the above principal has furnished *bale* in the sum of Fifteen Hundred Dollars (\$1500.00), which sum is now on deposit with the clerk of the said court.

NOW, THEREFORE, if the said William West shall prosecute the writ of error in said court and surrender himself unto the said court if he shall fail to make good his plea and shall abide by the order or decree of the said court or of the said Circuit Court of Appeals, then and in that event these *presences* to be void, otherwise to be and remain in full force and virtue of law. [11]

WILLIAM WEST,  
Principal.

EDWARD A. DAVIS,  
Witness to Signature.

Approved this Oct. 26th, 1923.

J. STANLEY WEBSTER,  
Judge.

Filed in the U. S. District Court, Eastern District of Washington. Oct. 26, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [12]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. C-4308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM WEST,

Defendant.

APPLICATION FOR EXTENSION OF TIME.

Comes now the defendant William West and moves the Court for an order extending until January 20, 1924, the time for perfecting his appeal herein and for suing out his writ of error and filing his bill of exceptions and for taking the other steps necessary toward the perfecting of said appeal for the reason that said defendant and his attorney are not able to complete the said record during the time allowed by the order of Court herein made.

This motion is based on the affidavit hereto attached.

EDWARD A. DAVIS,  
Attorney for Defendant.

State of Washington,  
County of Franklin,—ss.

I, Edward A. Davis, on oath state that I am the attorney for the defendant in the above-entitled cause and make this affidavit in support of the foregoing motion; that I have ordered the statement of fact or transcript of the evidence to be made by the court reporter who took the testimony at the hearing of said cause but am not able to secure said transcript or statement in time to perfect the appeal in this cause within the period fixed by the Court in the order made at the time notice of said appeal was given; that the said court reporter who took the testimony at the hearing of *was* cause was one A. W. Deavitt and that I have ordered the said [13] transcript to be made by him; that I am to-day in receipt of a letter from W. B. Cornell, another of the official court reporters in the county of Spokane, State of Washington, which letter is as follows, to wit:

Spokane, Wash., December 11, 1923.

Mr. Edward A. Davis,  
Pasco, Washington.

Dear Mr. Davis:

Mr. A. W. Deavitt, court reporter who reported a case for you in Federal Court recently, has asked me to inform you that he has been ill at home for several days, and that it will be three or four days before he will be able to start work on the Statement of Facts which you asked him to get out. He

thought you might want to secure an extension of time under the circumstances.

Yours very truly,  
(Signed) W. B. CORNELL,  
Official Court Reporter.

That by reason of the facts above set out it is necessary that I have an extension of time in order to properly perfect and present the defendant's appearance in said action; that no injury or inconvenience will result to the Government or to anyone else *of* account of this delay for the reason that the said cause cannot be brought on for hearing until the April term of 1924, and ample time will remain for bringing said cause on at said term if the extension of time herein asked for shall be granted.

EDWARD A. DAVIS.

Subscribed in my presence and sworn to before me this 12th day of December, A. D. 1923.

[Seal] NELLIE NICHOLS,  
Notary Public in and for the State of Washington  
Residing at Pasco.

Filed in the U. S. Dist. Court, Eastern District of Washington. Dec. 20, 1923. Alan G. Paine, Clerk.  
By A. P. Rumburg, Deputy. [14]

In the District Court of the United States for the  
Eastern District of Washington, Northern Di-  
vision.

No. C-4308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM WEST,

Defendant.

ORDER EXTENDING TIME TO AND INCLUD-  
ING JANUARY 20, 1924, TO PERFECT AP-  
PEAL.

Now, on this 19th day of December, A. D. 1923, the above-entitled cause coming on to be heard upon the motion of the defendant for an extension of time within which to sue out his writ of error, file his bill of exceptions and do all other things necessary to perfect his appeal in the above-entitled cause; and the Government being represented by F. R. Jeffrey, United States District Attorney, and the Court having inspected said application and being in all things duly advised,—

IT IS HEREBY ORDERED that the said appli-  
cation be and the same is hereby granted and the  
defendant is given an extension of time until Janu-  
ary 20, 1924, within which to take the necessary  
steps for perfecting the appeal in said cause.



Done by the Court this 19th day of December,  
A. D. 1923.

J. STANLEY WEBSTER,  
Judge of Said Court.

O. K.—FRANK R. JEFFREY,  
U. S. Attorney.

Filed in the U. S. District Court, Eastern District  
of Washington. Dec. 20, 1923. Alan G. Paine,  
Clerk. By A. P. Rumburg, Deputy. [15]

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In the District Court of the United States for the  
Eastern District of Washington, Northern Di-  
vision.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

WILLIAM WEST,  
Defendant.

ORDER EXTENDING TIME TO AND INCLUD-  
ING FEBRUARY 15, 1924, TO PERFECT  
APPEAL.

Now on this 19th day of January, A. D. 1924, pur-  
suant to the stipulation of the parties hereto, it is  
hereby ordered that the time within which the de-  
fendant may perfect his appeal, sue out his writ of  
error, file his bill of exceptions and take such other  
steps as are necessary toward the perfecting of

such appeal may be, and the same is hereby extended until the 15th day of February, A. D. 1924.

J. STANLEY WEBSTER.

Judge of Said Court.

O. K.—FRANK R. JEFFREY,

U. S. Attorney.

Filed in the U. S. District Court, Eastern District of Washington. Jan. 21, 1924. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [16]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. C-4308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM WEST,

Defendant.

PETITION FOR WRIT OF ERROR.

Comes now William West, defendant herein, and says, that on or about the 20th day of October, 1923, this Court entered judgment and sentence against the defendant William West, in which judgment and proceedings thereunto had in this cause certain errors were committed to the prejudice of the defendant, all of which will appear more in detail from the assignment of errors which is filed with this petition.



WHEREFORE, the said William West prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals in and for the Ninth Circuit of the United States, for the correction of the errors so complained of, and that the Court fix the bond to operate also as a supersedeas, and that a transcript of the record, proceedings, and papers in said cause, duly authenticated may be sent to the said Circuit Court of Appeals.

EDWARD A. DAVIS,  
Attorney for Defendant.

Filed in the U. S. District Court, Eastern District of Washington. Feb. 15, 1924. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [17]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. C-4308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM WEST,

Defendant.

ASSIGNMENT OF ERRORS.

Comes now the defendant and herein files his assignment of errors committed by the trial judge in the proceeding and trial of the above-entitled cause as follows, to wit:

## 1.

The Court erred in denying the motion of the defendant for a direct verdict of not guilty.

## 2.

That the Court erred in denying the motion of the defendant for a new trial upon the grounds and reasons stated in said motion to which reference is hereby made.

## 3.

That the Court erred in its rulings upon objection to evidence at the time of said trial as set out in the bill of exceptions herein filed and to which reference is hereby made.

EDWARD A. DAVIS,  
Attorney for Defendant.

Filed in the U. S. District Court, Eastern District of Washington. Feb. 15, 1924. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [18]

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In the District Court of the United States, in and for the Eastern District of Washington, Northern Division.

No. C-4308.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

WILLIAM S. WEST,  
Defendant.

## ORDER ALLOWING WRIT OF ERROR.

On this 16th day of April, 1924, came the defendant William S. West, and filed herein and presented to the Court his petition praying for the allowance of a writ of error, and filed therewith his assignments of error, intended to be urged by him, and prayed that the bond be given to operate also as a supersedeas and stay bond, be fixed by the Court, and also that a transcript of the record and proceedings and papers upon which judgment and sentence herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and such other and further proceedings may be had as may be proper in the premises.

In consideration thereof the Court does allow the writ of error and the cash bail heretofore deposited with the clerk in this cause is hereby ordered and adjudged to operate also as a supersedeas, the same being cash in the sum of \$1500.00, and the defendant having given for deposit for such bond, all proceedings to enforce said sentence and judgment to be stayed, until such writ of error is determined.

J. STANLEY WEBSTER,

Judge.

Filed in the U. S. District Court, Eastern District of Washington. Apr. 15, 1924. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [19]

In the District Court of the United States, in and for the Eastern District of Washington, Northern Division.

No. C-4308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM S. WEST,

Defendant.

### WRIT OF ERROR.

The President of the United States to the Honorable Judge of the District Court of the United States, for the Eastern District of Washington, Northern Division, GREETING:

Because in the records and proceedings as also in the rendition of judgment and sentence on a plea, which in the said District Court before you, or some one of you, between William S. West, plaintiff in error (defendant in the lower court), and the United States of America, defendant in error (plaintiff in the lower court), manifest error hath happened, to the great damage of the said William S. West, plaintiff in error as by his complaint appears:

We being willing that error, if any hath happened, shall be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf duly command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid,

with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date of this writ in the said Circuit Court of [20] Appeals, to be then and there held, that the records and proceedings aforesaid, being inspected, this said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 16th day of April, 1924, in the year of our Lord one thousand nine hundred twenty-four.

[Seal]

ALAN G. PAINE,

Clerk of the United States District Court, for the Eastern District of Washington, Northern Division.

Allowed by:

J. STANLEY WEBSTER,

District Judge.

Filed in the U. S. District Court, Eastern District of Washington. April 16, 1924. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy.

[Endorsed]: No. C-4308. Writ of Error. Filed in the U. S. District Court, Eastern Dist. of Washington. Apr. 16, 1924. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [21]

In the District Court of the United States, in and  
for the Eastern District of Washington, North-  
ern Division.

No. C-4308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM S. WEST,

Defendant.

CITATION ON WRIT OF ERROR.

The President of the United States to the United  
States of America, and the Messrs. F. R. JEF-  
FREY and H. SYLVESTER GARVIN, Your  
Attorneys, GREETING:

You are hereby cited and admonished to be and  
appear at the United States Circuit Court of Ap-  
peals for the Ninth Circuit, to be held at the city  
of San Francisco, in the State of California, within  
thirty days from the date of this writ, pursuant to  
a writ of error, regularly issued, and which is on  
file in the office of the clerk of the District Court  
of the United States, for the Eastern District of  
Washington, Northern Division, in an action pend-  
ing in said court, wherein William S. West is plain-  
tiff in error (defendant in the lower court), and  
the United States of America, is defendant in error  
(plaintiff in the lower court), and to show cause, if  
any there be, why the judgment in said writ of  
error mentioned, should not be corrected and



speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States of America, this 16th day of April, 1924.

J. STANLEY WEBSTER,  
United States District Judge. [22]

Due and legal notice of above citation acknowledged and copy thereof received this 16th day of February, 1924.

H. SYLVESTER GARVIN,  
Asst. U. S. District Attorney.

Filed in the U. S. Dist. Court, Eastern District of Washington. Apr. 16, 1924. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy.

Filed in the U. S. District Court, Eastern Dist. of Washington. Apr. 16, 1924. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. [23]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. C-4308.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

WILLIAM WEST,

Defendant.

## NOTICE RE BILL OF EXCEPTIONS.

To the Above-named Plaintiff and to Messrs. F. R. Jeffrey and H. Sylvester Garvin, Your Attorneys:

You and each of you are hereby notified that the above-named defendant has prepared and filed with the Clerk of the above-entitled court a proposed bill of exceptions, a copy of which is herewith served upon you.

You are further notified that the defendant will, at the time said bill of exceptions is certified, ask the Court to order attached and made a part of said bill of exceptions all of the exhibits received or offered in evidence on the trial, which are not already a part hereof.

Dated at Spokane, Washington, this 15th day of February, 1924.

EDWARD A. DAVIS,  
Attorney for Defendant.

Service of the above and foregoing notice and of the bill of exceptions thereto attached, by true copy thereof, is hereby acknowledged this 15th day of February, 1924.

H. SYLVESTER GARVIN,  
Asst. U. S. Attorney,  
U. S. District Attorney.

Feby. 15th, 1924.

Filed Feb. 15, 1924. Alan G. Paine, Clerk. By  
A. P. Rumburg, Deputy. [24]



In the District Court of the United States, in and for the Eastern District of Washington, Northern Division.

No. C-4308.

Before Hon. J. STANLEY WEBSTER, District Judge.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

WILLIAM WEST,  
Defendant.

BILL OF EXCEPTIONS.

Appearances :

For the Plaintiff: Mr. H. SYLVESTER GARVIN,  
Asst. United States Attorney.

For the Defendant: Mr. EDWARD A. DAVIS.

BE IT REMEMBERED, that the above-entitled cause came on regularly for hearing in the above-entitled court on Wednesday, October 17th, 1923, at 10:00 o'clock A. M., before the Honorable J. Stanley Webster, District Judge; the plaintiff appearing by H. Sylvester Garvin, Assistant United States District Attorney, and the defendant appearing in person and by his attorney, Edward A. Davis, and the following proceedings were had and done, to wit:

A jury was duly empaneled and sworn to try the case and an opening statement was made by Mr. Garvin and thereafter the following statements were introduced on behalf of the plaintiff. [25]

TESTIMONY OF J. M. SIMMONS, FOR THE  
GOVERNMENT.

J. M. SIMMONS, called as witness by the United States, being sworn, testified in its behalf as follows:

“I am a federal prohibition agent and was in Spokane during the months of May and June, 1923, and met the defendant Mr. West during that time. I met him first on the 19th of May at the place known as the Cliff House. I was accompanied by Agent Pickett and a lady by the name of Maxine Dale and a taxicab driver and a woman named Pauline Marks. I went out to the place again on June 2d. At this time I went out there alone.

I went out again on June 8th in the afternoon with Agent Picketts. We purchased Scotch whisky and beer. At this time I purchased three drinks of Scotch whisky and twelve drinks of Canadian beer. They were served to us by Jerry McKay.

The defendant West was not there at that time.”

Mr. DAVIS.—The defendant objects to the testimony of what occurred when he was not there and moves that it be stricken and the jury instructed to disregard it.

The COURT.—I will reserve my ruling until all the testimony is in, and you may renew your motion.

WITNESS.—Aside from the one place in question I visited possibly eight or ten other places. I do not say exactly and it is only by consulting my record that I would be able to tell you how many

(Testimony of J. M. Simmons.)

places we visited here in Spokane for that purpose.

Question.—Now, give me the list of the names of the persons that you met at these eight or ten places—how many places were there?

Answer.—I said between eight and ten.

Q. Between eight and ten. That must have been [26] nine, then; that is the only number between eight and ten, isn't it? Now, give me the names of the persons that you met at those nine places.

A. If there is any of the cases that are still pending, I would rather not answer.

Q. I do not care what you would rather do, I am asking you a question. A. Why, there is—

Mr. GARVIN.—If the Court please, I cannot see the competency of this testimony in reference to all the places he visited during that period of time.

Mr. DAVIS.—It goes to the credibility of the witness.

The COURT.—The objection is sustained.

Mr. DAVIS.—Exception.

Q. You say you bought liquor from McKay in each instance when you were out there?

A. Jerry McKay served it, yes, sir.

Q. And you bought the liquor from him, did you?

A. Yes, sir.

Q. That was true on each occasion when you were out there? A. Yes, sir.

Q. On the night of the 19th and the morning of the 20th of May and on the night of the 2d of June and on the afternoon of the 8th of June?

A. Yes, sir, all cases the same, yes, sir.

(Testimony of J. M. Simmons.)

Q. On all three of those occasions you bought the liquor from McKay?     A. Yes, sir.

Q. And bought it all, and he was the only one from whom you bought?     A. Yes, sir. [27]

### TESTIMONY OF JOHN PICKETT, FOR THE GOVERNMENT.

JOHN PICKETT, called as a witness by the United States, being duly sworn testified as follows:

“My name is John Pickett and I am also a federal prohibition agent and am acquainted with the defendant in this case. I met him first on May 19, 1923, at what is known as the Cliff House about five miles west of Spokane. I was also with Agent Simmons, Maxine Dale, Pauline Marks and a taxi driver. We bought Scotch whisky and Canadian beer both of which contained more than one-half one per cent alcohol in volume. I went out there again on the afternoon of June 8th, 1923, and we purchased some drinks. They contained more than one-half of one per cent alcohol. I tell from tasting liquor the per cent of alcohol contained by the experience I have had in buying and tasting liquor.”

Q. From that experience what is there in the taste of liquor which guides you to the amount of alcohol it contains?

A. Well, you can tell by the high percentage of alcohol or the low percentage of alcohol, by the effect it has on you.

Q. By the effect it has on you?     A. Yes, sir.

(Testimony of John Pickett.)

Q. What is that effect if it contains more than one-half of one per cent?

A. Well, I don't know how to express it.

Q. You become intoxicated, don't you?

A. Well, if you take on a load of it, yes, sir.

Q. How is that?

A. If you take on an abundance of it, yes.

Q. Suppose you take on seven or eight drinks?

A. No, no, you could not become intoxicated on [28] seven or eight drinks.

Q. Of Scotch whisky? A. No, sir.

Q. You could not? A. No, sir.

Q. All right. How many drinks of Scotch whisky would you have to have to get drunk?

A. Well, I don't know. I never was drunk, so I don't know how many I would have to have.

Q. Never were drunk? A. No, sir.

Q. How do you know then from your personal experience with it that it will make you drunk?

A. I know by the feeling that you have that it contains more than one-half of one per cent alcohol or that it has alcohol in it.

Q. You know by the feeling you have. How do you know that it is intoxicating if you have never been intoxicated?

A. Well, I know that it would—

Q. You know that it would intoxicate you if you kept on drinking it?

A. I feel certain that it would.

Q. You feel certain that it would but you don't

(Testimony of John Pickett.)

know from any personal experience with it, do you, because you have never been drunk?

A. I never been drunk, no.

Q. And you were not drunk when you went out there? A. No, sir.

Q. Had you been drinking before you went out there?

A. I believe that we did have a few drinks, yes, sir.

Q. You believe that you did have a few drinks and went out and got seven more while you were there?

A. Seven more of beer. I did not drink Scotch whisky out there.

Q. Oh, you did not drink Scotch whisky? [29]

A. No, sir.

Q. Did not try any of it at all?

A. No, sir, not out there on May 20th I did not.

Q. Then you don't know what was being served there that they called Scotch whisky, do you?

A. I know what was asked for.

Q. You said awhile ago that it contained more than one-half of one per cent from tasting it?

A. That that I drank.

Q. But you did not drink any?

A. I drank beer.

Q. You drank beer. I am asking you about Scotch whisky that you said was sold there. You did not drink any of that? A. Yes, sir.

Q. You did drink some of it? A. Yes, sir.



(Testimony of John Pickett.)

Q. A moment ago you said you did not. Now, which is correct?

A. On May 20th I did not, and on May 8th I did.

Q. On May 20th is what we are talking about.

A. I could not, because I did not have any Scotch whisky to drink that night.

Q. You did not drink any Scotch whisky on May 19th or 20th did you?     A. No, sir.

Q. Then you don't know what that was that they were serving and call Scotch whisky, do you?

Mr. GARVIN.—If the Court please, he has answered that three times, that he did not know.

The COURT.—Of course, he cannot know, Mr. Davis, if he did not taste it, and he said he did not. The conclusion draws itself. He cannot know according to his own testimony.

Mr. DAVIS.—That is undoubtedly true, but he has also said he knows that it was from tasting it. Which of these statements are we to accept?

The COURT.—He said he knows what it was from [30] tasting on one occasion when he did taste it, and he does not know what it was on another occasion when he did not taste it.

Mr. DAVIS.—Q. Then it was on June 8th that you are able to testify as to the alcoholic contents of that liquor which was labeled "Scotch Whisky"?     A. Yes, sir.

Q. And you cannot say anything about what was the alcoholic contents of the liquor labeled "Scotch Whisky" which was sold on May 19th and 20th?

A. No, sir.

TESTIMONY OF JAMES D. SCOTT (*alias*  
JERRY McKAY), FOR THE GOVERN-  
MENT.

JAMES D. SCOTT, *alias* JERRY McKAY, called as a witness by the United States, being sworn, testified on its behalf as follows:

The COURT.—Mr. McKay, you are charged in this court with certain violations of the National Prohibition Act. I deem it my duty to advise you that if any question is asked you while you are upon the witness-stand the answer to which will tend to convict you of any crime, you may refuse to answer the question, if you care to, stating that you refuse to answer for the reason that it may tend to convict you of a crime.

Mr. DAVIS.—The defendant West excepts to the statement of the Court as an incorrect statement of the rule of law, with all due respect to your Honor. I think the correct rule of law is that he cannot be excused from testifying, but that his evidence cannot be used against him.

The COURT.—Well, in any event Mr. Davis, it is his personal privilege. It has nothing to do with your client.

Mr. DAVIS.—No, no, but it does have to do with the testimony is all.

The COURT.—It is for the protection of the witness, [31] not for the defendant, that this privilege exists. Proceed with the examination.

Mr. DAVIS.—I am not referring to the witness. I am making the objection as to ourselves.



(Testimony of James D. Scott.)

The COURT.—Proceed with the examination.

WITNESS.—I was employed during the months of May and June as a waiter at the place known at the Cliff House out from Spokane.

Q. Whom were you employed out there by?

A. By Mr. West.

Mr. DAVIS.—I object as calling for a conclusion.

The COURT.—Overruled.

Mr. GARVIN.—Q. What were your duties out there, Mr. Scott?

Mr. DAVIS.—Objected to as immaterial.

The COURT.—Overruled.

Mr. DAVIS.—He might have done his duties or might not.

Mr. GARVIN.—I asked him what they were.

The COURT.—I will overrule the objection.

A. I was a waiter.

WITNESS.—My services ceased out there about the end of July.

Q. About the last of July. What were your general duties there on those premises?

Mr. DAVIS.—Objected to as immaterial.

The COURT.—Overruled.

Mr. DAVIS.—Exception.

WITNESS.—I remember Mr. Simmons and Mr. Pickett being out there. I cannot recall the dates but I remember what they did out there. They did the same as anyone else. On one occasion they walked out there through the rain in [32] the afternoon.

Mr. DAVIS.—Just a moment; that refers again

(Testimony of W. S. West.)

to this time when the defendant was not there and I object to it.

The COURT.—Overruled.

At the close of the testimony for the Government the following proceedings were had:

Mr. GARVIN.—That is our case.

Mr. DAVIS.—Defendant now moves for an order of dismissal on the ground of insufficiency of the evidence to hold him.

The COURT.—That motion is denied.

Mr. DAVIS.—Now, I want to renew the objection to the evidence of the transactions on the afternoon of the 8th which occurred in the absence of the defendant.

The COURT.—It will be denied.

Mr. DAVIS.—Exception.

#### TESTIMONY OF W. S. WEST, ON HIS OWN BEHALF.

W. S. WEST, defendant, being sworn, testified on his own behalf as follows:

“My name is W. S. West and I live at the Cliff House and have lived in this county for four years. I remember when the two witnesses, Simmons and Pickett came to my place the night of the 19th or early morning of the 20th of May, 1923. There were with them Maxine Dale, Pauline Marks and some taxi driver. Maxine Dale was in no way interested in the Cliff House. She was employed there at one time when I was sick at the Sanitarium. When they came there that night Simmons

(Testimony of W. S. West.)

and Pickett had been drinking. Simmons had a bottle in his hand and I went over to him and said, 'You will have to keep that out of sight or get out. I don't allow that [33] in here.' Later I saw him at another table flashing this bottle. He went over to some other party of guests. I spoke to him about it again and called him to one side because he was using improper language and a few moments later Pickett and Simmons left the place without taking the ladies along. Simmons was out there again the night of June 2d. He came alone that time, was in about the same condition as on the previous occasion but he had a fresh scratch on his face and there was blood on his face. He was intoxicated at that time. He had a bottle with him, pulled it out and got a little more boisterous than the other time and I put him out bodily. He asked if he could call a taxi and I told him he could and let him stay downstairs until the taxi arrived.

I served near beer and soft drinks at the place. I never instructed McKay or anyone else to sell Canadian beer or whisky. I did instruct him to not allow it around and if he saw it to call my attention to it. I don't know what occurred there the afternoon of June 8th as I was not there. When I went away I did not leave any beer or whisky in the refrigerator or any bottle labeled "Scotch Whisky." There has been no such bottle on the place to my knowledge."

(Testimony of W. S. West.)

Cross-examination by Mr. GARVIN.

“Before I began running the Cliff House I was a mechanic on Lew Adams’ ranch running a caterpillar for him. I don’t remember just the date that I took over the Cliff House. No one has any interest there with me. Witness McKay was employed by me as a waiter and Maxine Dale was in charge of the place when I was sick in the sanitarium. She never had anything to do with the place while I was there but was there looking after the sandwiches and cooking when I was gone. It is a [34] public place located south of Sunset Highway near Spokane. I never kept any whisky or beer on the place and never gave anyone permission to sell any there and I did not allow the guests to bring it there for themselves. Of course if they did not show it I had no way of knowing that they had it. On the 20th of May when Simmons and Pickett were out there Simmons had a little bottle and said to me, ‘Oh, come on and be a good fellow and take a drink with me.’ I said, ‘Keep that out of sight.’ I kept no small glasses out there to serve drinks of whisky in. I don’t know whether there was any in the house or not. I know that I had none.”

TESTIMONY OF MAXINE DALE, FOR DEFENDANT.

MAXINE DALE, called as a witness for the defendant, testified on his behalf as follows:

“My name is Maxine Dale and I live at the

(Testimony of Maxine Dale.)

Louvre Hotel in Spokane. I have lived there since last December. I met Simmons and Pickett at the Louvre Hotel on May 19, 1923. We stayed at the Louvre Hotel until 11:30 or 12:00 o'clock that night. Simmons had a bottle of whisky with him and we had some drinks, then we went out to the Cliff House. They suggested that we go out there and dance. We called a taxi and went. There were five of us counting the driver. We met Mr. West at the door and I introduced Pickett and Simmons. I had known Mr. West before that. We went up to the dance-hall and danced. The dining-room and dance-hall are upstairs. Simmons got out his bottle and we took some drinks up there, then West came up and told him he would have to keep his bottle out of sight. He had to tell him two or three times. Then Simmons and Pickett had some argument with West and they [35] (Simmons and Pickett) went away and left us there at the house. When we went there Simmons was pretty drunk. I don't think Pickett was so drunk but we all had been drinking. Pickett was drunk enough so it was noticeable. I was also there on June 2d when Simmons came out. He was very drunk and was noisy and boisterous and Mr. West put him out. During these two visits the witness McKay or Scott did not serve me or these two men any beer or whisky in my presence. We ordered beer and got Guilt Top near beer. I never saw beer like that in evidence in the refrigerator at the Cliff House."



(Testimony of Maxine Dale.)

Cross-examination by Mr. GARVIN.

“When Simmons and Pickett came to the Louvre Hotel the afternoon of May 19th I think Simmons said he had just come up from Texas. It was about 11:00 o'clock when he suggested that we go to the Cliff House.”

Q. You say you were drinking prior to the time you went out there that night?

A. Yes, sir, we were drinking out of the bottle.

Q. Where was this at?

A. At the Louvre Hotel.

Q. At the Louvre Hotel. That is the hotel that you are in charge of, isn't it?     A. Yes, sir.

Q. And in whose room was this drinking going on?     A. Drinking in the dining-room.

Q. In the dining-room up there, and the officers, as I understand it, brought this bottle up there?

A. Yes, sir.

Q. As a matter of fact, were you not selling drinks up there for fifty cents a drink?

A. No, sir.

Mr. DAVIS.—Objected to as immaterial and not proper cross-examination.

The COURT.—Overruled.

Mr. GARVIN.—Your answer to that is no?

A. No, sir, I did not. [35½]

Q. You did not sell either Mr. Pickett or Mr. Simmons any whisky up there?     A. No, sir.

(Argument by Mr. Garvin.)

(Argument by Mr. Davis.)

(Reply by Mr. Garvin.)

(Charge to the Jury.)

CERTIFICATE OF JUDGE TO BILL OF EX-  
CEPTIONS.

State of Washington,  
County of Spokane,—ss.

I, J. Stanley Webster, United States District Judge for the Eastern District of Washington and the Judge before whom the above-entitled action was tried, to wit: the cause entitled United States of America vs. W. S. West et al., defendants, which is one C-4308 in said district court, DO HEREBY CERTIFY, that the matters and proceedings embodied in the foregoing bill of exceptions, together with the proposed amendments thereto filed by the United States of America, are matters and proceedings occurring in the said cause and the same are hereby made a part of the record therein; and that the above and foregoing bill of exceptions contains all the material facts, matters and proceedings heretofore occurring in said cause and not already a part of the record therein; and contains all the material evidence oral and in writing therein, and that the above and foregoing bill of exceptions was duly and regularly filed with the clerk of the said court and thereafter duly and regularly served with the time authorized by law; and that no amendments were proposed to said bill of exceptions excepting such as are embodied therein; that due and regular [36] written notice of application to the Court for settlement and certifying said bill of exceptions was made and served upon the plaintiff, which notice specified the place and time (not less



than three days nor more than ten days after the service of said notice) to settle and certify said bill of exceptions.

Dated at Spokane, Washington, this 31st day of March, A. D. 1924.

J. STANLEY WEBSTER,  
Judge. [37]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. C-4308.

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

W. S. WEST et al.,  
Defendants.

STIPULATION AND ORDER EXTENDING TIME TO AND INCLUDING APRIL 20, 1924, TO FILE RECORD AND DOCKET CAUSE.

Comes now Edward A. Davis, Attorney for the above-named defendant, and H. Sylvester Garvin, Assistant United States Attorney for the Eastern District of Washington, on behalf of the plaintiff above named, and it is hereby STIPULATED and AGREED between the parties that the defendant above named may have up to and including the 20th day of April, 1924, in which to complete his record

on appeal to the Circuit Court of Appeals, including his petition for a writ of error, etc.

H. SYLVESTER GARVIN,  
Assistant United States Attorney,  
Attorney for Plaintiff.

E. A. DAVIS,  
Attorney for Defendant.

Upon reading the stipulation above, it is hereby ORDERED that the above-entitled case be continued over the term in accordance with the stipulation in order that the defendant may perfect his appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit.

Done in open court this 31st day of March, A. D. 1924, at Spokane, Washington.

J. STANLEY WEBSTER,  
Judge.

Filed in the U. S. District Court, Eastern District of Washington. Apr. 1, 1924. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [38]

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In the District Court of the United States, for the Eastern District of Washington, Northern Division.

C-4308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

W. S. WEST et al.,

Defendants.

## PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

Please make up and certify to the Circuit Court of Appeals, 9th Judicial Circuit, the following papers and records in the above-entitled cause:

1. Information.
2. Verdict of the jury.
3. Motion for new trial.
4. Order denying new trial.
5. Judgment and sentence.
6. Bail bond on appeal.
7. Application for extension of time to file appeal.
8. Order extending time of appeal to January 20, 1924.
9. Order extending time of appeal to February 15, 1924.
10. Petition for writ of error.
11. Assignment of error.
12. Order allowing writ of error.
13. Writ of error.
14. Citation.
15. Bill of exceptions and certificate.
16. Stipulation allowing extension to April 20, 1924, to complete appeal.
17. Praecipe for transcript of record.

EDWARD A. DAVIS,  
Attorney for W. S. West.

Filed in the U. S. District Court, Eastern Dist. of Washington. Apr. 16, 1924. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [39]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
Eastern District of Washington,—ss.

I, Alan G. Paine, Clerk of the District Court of the United States in and for the Eastern District of Washington, do hereby certify that the foregoing typewritten pages numbered from one to thirty-nine inclusive, constitute and are a full, true, correct and complete copy of so much of the record, pleadings, orders and other proceedings had in said action, as the same remain of record and on file in the office of the clerk of the said District Court, as called for by the defendant and plaintiff in error in its praecipe; and that the same constitute the record on writ of error from the judgment of the District Court of the United States in and for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California, which writ of error was lodged and filed in my office on April 16th, 1924.

I further certify that I hereto attach and herewith transmit the original writ of error and the original citation issued in this cause.

I further certify that the fees of the clerk of this court for preparing and certifying to the foregoing typewritten record amount to the sum of eighteen dollars and thirty-five cents (\$18.35), and that the same has been paid in full by Edward A. Davis, attorney for defendant and plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at Spokane, in the said District, this 19th day of April, A. D. 1924.

[Seal]

ALAN G. PAINE,  
Clerk. [40]

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[Endorsed]: No. 4248. United States Circuit Court of Appeals for the Ninth Circuit. William S. West, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Eastern District of Washington, Northern Division.

Received April 23, 1924.

F. D. MONCKTON,  
Clerk.

Filed May 5, 1924.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.